

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jean Paul Lozada	Team: Squad #02	CCRB Case #: 202104887	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 07/31/2021 3:19 AM	Location of Incident: Delancey Street - Essex Street subway station	Precinct: 07	18 Mo. SOL 1/31/2023	EO SOL 1/31/2023	
Date/Time CV Reported Thu, 08/05/2021 9:03 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Thu, 08/05/2021 9:03 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT John Zorrilla	03069	933511	TB DT04
2. An officer			TB DT04

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Kenneth Munoz	18791	961967	TB DT04
2. POM Stephen Babin	08730	933627	TB DT04
3. POM Stephen Patti	10817	957939	007 PCT
4. POM Jonathan Rivera	27011	965460	TB DT04
5. POM Xavier Reyes	25133	967291	TB DT04
6. LT Augusto Hernandez	00000	935012	TB DT04
7. PO Christopher Macaluso	26181	967178	TD 4
8. PO Nicholas Battaglia	17755	958297	TD 4

Officer(s)	Allegation	Investigator Recommendation
A.SGT John Zorrilla	Abuse: Sergeant John Zorrilla threatened to arrest § 87(2)(b)	
B.SGT John Zorrilla	Force: Sergeant John Zorrilla used pepper spray against § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
C.SGT John Zorrilla	Force: Sergeant John Zorrilla used physical force against § 87(2)(b)	
D.SGT John Zorrilla	Discourtesy: Sergeant John Zorrilla spoke discourteously to § 87(2)(b)	
E.SGT John Zorrilla	Abuse: Sergeant John Zorrilla forcibly removed § 87(2)(b) to the hospital.	
F.SGT John Zorrilla	Discourtesy: Sergeant John Zorrilla spoke discourteously to an individual.	
G.SGT John Zorrilla	Force: Sergeant John Zorrilla used physical force against an individual.	
H.SGT John Zorrilla	Force: Sergeant John Zorrilla used pepper spray against § 87(2)(b)	
I.SGT John Zorrilla	Force: Sergeant John Zorrilla used physical force against § 87(2)(b)	
J. An officer	Force: An officer restricted § 87(2)(b) breathing.	
K.SGT John Zorrilla	Abuse: Sergeant John Zorrilla searched § 87(2)(b)	
L.SGT John Zorrilla	Force: Sergeant John Zorrilla used physical force against § 87(2)(b)	
M.SGT John Zorrilla	Discourtesy: Sergeant John Zorrilla spoke discourteously to § 87(2)(b)	
N.SGT John Zorrilla	Off. Language: Sergeant John Zorrilla made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)	
O.SGT John Zorrilla	Off. Language: Sergeant John Zorrilla made remarks to § 87(2)(b) based upon the gender of § 87(2)(b) mother.	
P.SGT John Zorrilla	Abuse: Sergeant John Zorrilla forcibly removed § 87(2)(b) to the hospital.	
Q.SGT John Zorrilla	Discourtesy: Sergeant John Zorrilla spoke discourteously to an individual.	

## Case Summary

On August 5, 2022, § 87(2)(b) filed this complaint via the CCRB’s call processing system on the behalf of himself, § 87(2)(b) § 87(2)(b) and other unidentified individuals (Board Review 01). This case was designated as sensitive due to media coverage (Board Review 02-04) and viral social media videos of this incident (Board Review 05-07) and a related incident which was investigated in case # § 87(2)(b)

On July 31, 2021, at approximately 3:19 a.m., § 87(2)(b) entered the Delancey-Essex Streets subway station in Manhattan, and Sergeant John Zorrilla of Transit Bureau District 04 told § 87(2)(b) that he could not take the train because he was drunk. § 87(2)(b) and Sergeant Zorrilla started arguing, and Sergeant Zorrilla told § 87(2)(b) that he would be arrested if he came through the turnstile (**Allegation A – Abuse of Authority: Threat of Arrest**, § 87(2)(g))

§ 87(2)(b) entered the station and approached the turnstile, and Sergeant Zorrilla told him he could not take the train. § 87(2)(b) swiped his Metrocard, pushed Sergeant Zorrilla in his chest, and went through the turnstile. Sergeant Zorrilla then pepper-sprayed § 87(2)(b) (**Allegation B – Force: Pepper Spray**, § 87(2)(g)) and pushed him to the floor (**Allegation C – Force: Physical Force**, § 87(2)(g)) § 87(2)(b) asked the officers why the officers had § 87(2)(b) on the ground, and Sergeant Zorrilla allegedly cursed at § 87(2)(b) in response (**Allegation D – Discourtesy: Word**, § 87(2)(g)) § 87(2)(b) was removed to New York Presbyterian Lower Manhattan Hospital for treatment for his intoxication and the pepper spray (**Allegation E – Abuse of Authority: Forcible Removal to Hospital**, § 87(2)(g))

An unidentified female attempted to enter the station without paying her fare, and Sergeant Zorrilla allegedly told her to pay her fare or “get the fuck out” (**Allegation F – Discourtesy: Word**, § 87(2)(g)) The female paid her fare, and a verbal dispute ensued between her and Sergeant Zorrilla. Sergeant Zorrilla grabbed the female’s arm, and she tried to pull away from him. Sergeant Zorrilla allegedly “slammed” the female to the floor, then grabbed her pants and dragged her on her back across the floor through the emergency gate (**Allegation G – Force: Physical Force**, § 87(2)(g)) The female attempted to reenter the subway station through the emergency gate. Sergeant Zorrilla pushed the female back, and she fell to the floor (**within Allegation G**). § 87(2)(b) approached Sergeant Zorrilla and the female at the emergency gate, and Sergeant Zorrilla pepper sprayed him (**Allegation H – Force: Pepper Spray**, § 87(2)(g))

§ 87(2)(b) attempted to leave the station, and Sergeant Zorrilla allegedly pulled him by his arm and “slammed” him to the floor (**Allegation I – Force: Physical Force**, § 87(2)(g)) An officer allegedly placed a knee on § 87(2)(b) lower back, restricting his breathing (**Allegation J – Force: Restricted Breathing**, § 87(2)(g)) The officers handcuffed § 87(2)(b) and Sergeant Zorrilla searched § 87(2)(b) wallet (**Allegation K – Abuse of Authority: Search of Person**, § 87(2)(g))

§ 87(2)(b) suffered a seizure in the station and screamed in agony. After paying his fare and going through the turnstile, § 87(2)(b) saw § 87(2)(b) on the floor and asked the officers, “What the fuck is wrong with you?” A verbal dispute ensued between § 87(2)(b) and Sergeant Zorrilla. Sergeant Zorrilla told § 87(2)(b) to leave the station and pushed him through the turnstile into the unpaid side of the mezzanine (**Allegation L – Force: Physical Force**, § 87(2)(g)) The verbal dispute continued, and Sergeant Zorrilla allegedly called § 87(2)(b) a “dick” and § 87(2)(b) mother a “bitch” (**Allegation M – Discourtesy: Word**, § 87(2)(g)) **Allegations N and O – Offensive Language: Gender**, § 87(2)(g)

§ 87(2)(b) was removed from the station, transported to § 87(2)(b) (Allegation P – Abuse of Authority: Forcible Removal to Hospital, § 87(2)(g) and issued a summons for disorderly conduct (Board Review 08). The verbal dispute between § 87(2)(b) and Sergeant Zorrilla continued on the sidewalk outside the station. Sergeant Zorrilla grabbed § 87(2)(b) by his sweater and pulled him down to the ground (within Allegation L), and the officers placed § 87(2)(b) under arrest for resisting arrest and obstructing governmental administration (Board Review 09). § 87(2)(b) unidentified male friend asked Sergeant Zorrilla why he brought § 87(2)(b) down to the ground, and Sergeant Zorrilla told him that he was “talking too much shit” (Allegation Q – Discourtesy: Word, § 87(2)(g))

Body-worn camera (BWC) footage was obtained from the BWCs of Sergeant Zorrilla and Police Officers Jonathan Rivera, Xavier Reyes, Stephen Babin, and Kenneth Munoz of Transit Bureau District 04. These videos are saved in IA#s 99 (Board Review 10) and are summarized in IA#122 (Board Review 11). The viral videos are saved in IA #s 05, 14, and 15 (Board Review 05-07).and are summarized in IA#183 (Board Review 38)

### **Findings and Recommendations**

#### **Allegation (A) Abuse of Authority: Sergeant John Zorrilla threatened to arrest § 87(2)(b)**

§ 87(2)(b) was interviewed on August 20, 2021. Sergeant Zorrilla was interviewed on September 13, 2022. The investigation was unable to establish contact with § 87(2)(b) or § 87(2)(b) or identify the victims of Allegations F, G, and Q. § 87(2)(b) failed to sign and return HIPAA forms.

In Sergeant Zorrilla’s BWC footage (Board Review 12), at runtime 39:04, § 87(2)(b) staggers toward the turnstile, and Sergeant Zorrilla tells him that he cannot take the train because he is drunk. Police Officer Rivera then escorts § 87(2)(b) toward the exit. At 40:50, § 87(2)(b) walks back toward the turnstile. He is holding his wallet and says, “I have \$2,000 in my wallet right now.” § 87(2)(b) then films the officers on his cell phone. He continues to speak, but what he says is unclear, and he slowly walks toward the turnstile. At 42:09, Sergeant Zorrilla says, “Listen, you’re not getting on the train.” § 87(2)(b) begins arguing with Sergeant Zorrilla, shouting, and using racial slurs. He swipes his Metrocard several times and insists he has a right to get on the train. § 87(2)(b) says, “Arrest me,” and Sergeant Zorrilla says, “I will.” Police Officer Rivera says, “You’re too intoxicated, man. You’re very intoxicated, you can’t even walk straight.” Sergeant Zorrilla then says, “You come through that turnstile, you are getting arrested.” No one is in handcuffs at this moment.

§ 87(2)(b) made no mention of Sergeant Zorrilla threatening to arrest him. He stated that he consumed a vodka-Red Bull and a shot of tequila before entering the station. He did not believe he was drunk or tipsy, or that his intoxication affected his memory of the incident. § 87(2)(b) believed he saw a male in handcuffs on the floor when he entered the station. § 87(2)(b) asked the officers, “What the fuck are you guys doing?” He called the officers names like “fucking primate” and said, “Fuck you guys, why do you have the guy on the floor like this?”

Sergeant Zorrilla stated that he approached § 87(2)(b) and told him he could not enter the station because he was intoxicated. He felt that it was not safe for § 87(2)(b) to be in the station and noted that it is against MTA rules to be intoxicated inside a subway station. § 87(2)(b) then began insulting and threatening Sergeant Zorrilla and calling him racial slurs. Sergeant Zorrilla did not recall whether he threatened to arrest § 87(2)(b)

Title 21, Part 1050.7 of the New York Codes, Rules, and Regulations (Board Review 13) states, “No person on or in any facility or conveyance shall: (h) enter or remain in any facility or conveyance while their ability to function safely in the environment of the transit system is impaired by the consumption of alcohol or by the taking of any drugs,” and Patrol Guide Procedure 212-20 (Board Review 14) states, “Any person who violates any portion of NYCRR Part 1050... is subject to ejection for New York City Transit facilities.”

New York Penal Law section 140.05 (Board Review 15) states that a person is guilty of trespass, a violation, when “he knowingly enters or remains unlawfully in or upon premises.”

It is undisputed that § 87(2)(b) had consumed alcohol before entering the subway station. § 87(2)(b) appears on BWC to be unsteady on his feet. He disobeyed numerous commands to exit the station and instead swiped his Metrocard several times, insisting he has a right to get on the train after being ordered to leave the station. The BWC footage supports Sergeant Zorrilla’s assessment that § 87(2)(b) was too impaired to function safely within the subway system § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

**Allegation (B) Force: Sergeant John Zorrilla used pepper spray against § 87(2)(b)**

**Allegation (C) Force: Sergeant John Zorrilla used physical force against § 87(2)(b)**

**Allegation (D) Discourtesy: Sergeant John Zorrilla spoke discourteously to § 87(2)(b)**

**Allegation (E) Abuse of Authority: Sergeant John Zorrilla forcibly removed § 87(2)(b) to the hospital.**

In Police Officer Reyes’ BWC footage (Board Review 16), at runtime 47:15, § 87(2)(b) approaches the turnstile, and Sergeant Zorrilla tells him in English and Spanish that he cannot take the train. § 87(2)(b) stands motionless and does not respond. At 47:50, § 87(2)(b) swipes his Metrocard. Sergeant Zorrilla says, “You’re not getting on this train.” § 87(2)(b) then shoves Sergeant Zorrilla in his chest and goes through the turnstile. Sergeant Zorrilla then pepper sprays § 87(2)(b) in his face. § 87(2)(b) rubs his eyes and lifts his left foot as though he is preparing to take a step forward. Sergeant Zorrilla, who is standing to § 87(2)(b) right, then pushes § 87(2)(b) in the right shoulder, and § 87(2)(b) falls to the floor. Police Officers Rivera and Reyes then handcuff § 87(2)(b). § 87(2)(b) is present during this entire encounter, and Sergeant Zorrilla does not use any profanities toward him in this video, or in any of the remaining BWC footage.

§ 87(2)(b) believed when he entered the station, § 87(2)(b) was already on the floor and in handcuffs. He made no mention of § 87(2)(b) pushing Sergeant Zorrilla, or of Sergeant Zorrilla pepper spraying or pushing § 87(2)(b). § 87(2)(b) stated that after he started cursing at Sergeant Zorrilla and calling him names, Sergeant Zorrilla cursed at him and told him he could not take the subway, but he did not specify the specific profanities that Sergeant Zorrilla used.

An AIDED report prepared for § 87(2)(b) (Board Review 17) indicates that § 87(2)(b) entered the subway station highly intoxicated, and that he was ultimately removed to New York Presbyterian Lower Manhattan Hospital.

A Threat, Resistance, and Injury (TRI) Worksheet prepared for § 87(2)(b) (Board Review 18) indicates that § 87(2)(b) pushed/shoved Sergeant Zorrilla, and that Sergeant Zorrilla deployed his pepper spray to overcome § 87(2)(b) resistance or aggression.

Sergeant Zorrilla's account of his encounter is generally consistent with the BWC footage. He stated that he believed § 87(2)(b) was intoxicated because he was stumbling. After § 87(2)(b) went through the turnstile, Sergeant Zorrilla believed § 87(2)(b) could become violent due to his intoxication and having "bum rushed" him. § 87(2)(b) stepped or "rushed" toward Sergeant Zorrilla, and Sergeant Zorrilla pepper sprayed § 87(2)(b) because he believed § 87(2)(b) behavior was threatening. § 87(2)(b) touched his face but did not otherwise seem to respond to the pepper spray, and Sergeant Zorrilla was concerned that the pepper spray had no effect because § 87(2)(b) was intoxicated. § 87(2)(b) took a step toward Sergeant Zorrilla in a manner that Sergeant Zorrilla felt indicated that § 87(2)(b) was going to "charge" him, and then Sergeant Zorrilla pushed § 87(2)(b) to the floor. Sergeant Zorrilla called an ambulance for § 87(2)(b) to rinse the pepper spray from his eyes. § 87(2)(b) was transported to a hospital due to his intoxication.

Patrol Guide Procedure 221-07 (Board Review 19) states. "O.C. pepper spray may be used to gain or maintain control of persons who are actively resisting arrest or lawful custody or exhibiting active aggression, or to prevent individuals from physically injuring themselves, members of service, or other persons. O.C. pepper spray may be used in arrest or custodial restraint situations where physical presence and/or verbal commands have not been, or would not be, effective in overcoming physical resistance. O.C. pepper spray shall not be used in situations that do not require the use of physical force." After utilizing pepper spray against an individual, officers must request the response of EMS.

§ 87(2)(b) ignored repeated commands to leave the station given in both English and Spanish, and he pushed Sergeant Zorrilla in his chest as he was standing in front of the turnstile attempting to prevent § 87(2)(b) entry. Given that Sergeant Zorrilla's repeated verbal commands for § 87(2)(b) to leave the station, and his physical presence in front of the turnstile blocking § 87(2)(b), § 87(2)(b) failed to stop § 87(2)(b) from shoving Sergeant Zorrilla and entering the station, § 87(2)(g)

Patrol Guide Procedures 221-01 (Board Review 20) and 221-02 (Board Review 21) state that officers may use force when it is reasonable to ensure officers' or civilians' safety, or when it is reasonable to place a person in custody or to prevent escape from custody. Officers' use of force must be reasonable under the circumstances, and de-escalation techniques, which may reduce or eliminate the need for force by gaining the subject's voluntary compliance, must be prioritized. Officers shall "apply no more than the reasonable force necessary to gain control," and excessive force is not tolerated. Factors to be considered in determining whether the use of force is reasonable include the following: the nature and severity of the crime/circumstances; actions taken by the subject; duration of the action; immediacy of the perceived threat or harm to the subject, members of service or bystanders; whether the subject is actively resisting custody; whether the subject is attempting evade arrest by flight; the number of subjects in comparison to the number of members of service; size, age and condition of the subject in comparison to the member of service; subject's violent history if known; presence of hostile crowd or agitators; and whether the subject is apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase likelihood of violence.



Sergeant Zorrilla was concerned that the pepper spray had no effect on § 87(2)(b) because he was intoxicated. However, once Sergeant Zorrilla pepper sprayed him, he began wiping his eyes. Sergeant Zorrilla stated that § 87(2)(b) took a step toward him in a manner that led him to believe § 87(2)(b) was going to “charge” him, but § 87(2)(b) merely lifted his foot and did not take a full step forward, and he was not walking toward Sergeant Zorrilla, who was to his right. Although § 87(2)(b) had pushed Sergeant Zorrilla, the pepper spray appeared to effectively subdue § 87(2)(b) and Sergeant Zorrilla pushed § 87(2)(b) to the floor immediately after deploying the pepper spray without making any effort to handcuff him while he was standing. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation (F) Discourtesy: Sergeant John Zorrilla spoke discourteously to an individual.**

**Allegation (G) Force: Sergeant John Zorrilla used physical force against an individual.**

**Allegation (H) Force: Sergeant John Zorrilla used pepper spray against § 87(2)(b)**

In Police Officer Reyes’ second BWC video (Board Review 23), at runtime 01:07, Police Officer Reyes tells two unidentified females standing together at the turnstile to swipe through one at a time. At 02:39, the victim (the female in the white pants) pays her fare and goes through the turnstile. § 87(2)(b) is on the unpaid side of the mezzanine, and § 87(2)(b) is seated on the floor awaiting EMS. The female in the white pants says, “Fucking pussy-ass bitches,” and the other female says, “Y’all are bored.” The female in the white pants says, “Yeah, bro. Like, honestly, get your fucking life together. That fact that you’re, honestly, taking the time out of your night...” Her speech is slow and slurred. At 03:00, Sergeant Zorrilla says, “Go take the train,” and then approaches the female in the white pants, grabs her right arm, and says, “Come here.” Sergeant Zorrilla brings the female toward the emergency gate, and the female attempts to pull away from Sergeant Zorrilla, causing her to move in circles around Sergeant Zorrilla while he holds her arm. § 87(2)(b) shouts, “Go to the floor, go to the floor!” At 03:23, the female is seen on her back on the floor, but it is unclear how she ended up in that position (this is not seen in any of the other BWC videos). Sergeant Zorrilla then grabs the bottom of the female’s pants by her ankles and drags her on her back across the floor and through the emergency gate. The female reenters the station through the emergency gate, and Sergeant Zorrilla pulls her back out by her arms. At runtime 03:40, the female is seen on the floor again. She stands up, shouting “I just paid for this!” and Sergeant Zorrilla pushes her from the emergency gate. At runtime 03:55, the female in the white pants attempts to reenter through the emergency gate again, and Sergeant Zorrilla pushes her back. The friend of the female in the white pants is behind her, and she falls to the floor, but it is unclear how this happens. § 87(2)(b) is also standing at the emergency gate and says, “I’m gonna hurt you, my dude,” and Police Officer Reyes says, “Get back.” Sergeant Zorrilla then pepper sprays § 87(2)(b) who walks away from the emergency gate. At no point does Sergeant Zorrilla use profanities toward the female.

§ 87(2)(b) stated that a “tipsy” white female entered the station through the emergency gate without paying her fare, and Sergeant Zorrilla told her, “Go pay your fare or get the fuck out.” The female appeared to comply and turned back toward the exit. As she was exiting the station, Sergeant Zorrilla “changed his mind,” ran up to the female, and grabbed her hand. The female tried to pull away from Sergeant Zorrilla, who grabbed her right leg and “slammed” her to the floor, and

her head hit against the floor. Sergeant Zorrilla then handcuffed the female and told § 87(2)(b) he needed to leave, and § 87(2)(b) continued to insist on taking the train. Sergeant Zorrilla came halfway through the turnstile and pepper sprayed § 87(2)(b) without warning.

A TRI Worksheet prepared for “Jane Doe” (Board Review 24) states that the female was ejected from the station for being “disorderly and drunk.” She became “aggressive and combative” after being ejected and was “physically escorted out of the system.” The female employed active resistance against the officers, and Sergeant Zorrilla wrestled/grappled her in order to overcome her resistance or aggression.

Sergeant Zorrilla stated that he believed the female in the white pants was intoxicated due to her slurred speech, her slow movements as she navigated the turnstile, and the odor of alcohol on her breath. After crossing the turnstile, the female cursed at Sergeant Zorrilla, who told her to “go about her business” and get on the train. Sergeant Zorrilla did not recall using profanities toward the female. The female said, “Fuck you,” and Sergeant Zorrilla decided to eject the female because she was intoxicated, being “disorderly,” and was “interfering with what [he] was doing.” Sergeant Zorrilla said, “Come here,” grabbed her arm, and pulled her toward the emergency gate. The female attempted to walk in the opposite direction. § 87(2)(b) told the female to “throw herself on the ground,” which she did while Sergeant Zorrilla tried to bring her through the emergency gate. Sergeant Zorrilla decided to drag the female across the floor through the emergency gate because she was already on her back. Sergeant Zorrilla did not perform a forcible takedown on the female. The female attempted to reenter the paid side through the emergency gate, and Sergeant Zorrilla pushed her in her arms. The female “threw herself” to the floor again just outside the emergency gate. The friend of the female in the white pants also fell to the floor, but Sergeant Zorrilla did not know why, and he did not believe he made physical contact with her. § 87(2)(b) put his phone in his pocket and “motioned” with his hands as though he was going to grab Sergeant Zorrilla. § 87(2)(b) then “charged” Sergeant Zorrilla, and when he was “a couple of feet” away, Sergeant Zorrilla pepper sprayed § 87(2)(b). Sergeant Zorrilla had thought § 87(2)(b) was going to hit him due to his previous verbal threats of violence.

§ 87(2)(b) stated that Sergeant Zorrilla told the female, “Go pay your fare or get the fuck out,” but Sergeant Zorrilla is not heard using any profanities toward the female in any of the BWC footage. § 87(2)(g)

Absent a statement from the female in the white pants, the investigation was unable to determine whether she deliberately fell to the floor or was forcibly taken down by Sergeant Zorrilla. Further, Sergeant Zorrilla pushing the female back as she repeatedly tried to enter the station through the emergency gate § 87(2)(g)

However, once she was on her back, Sergeant Zorrilla made no effort to lift her off the floor or otherwise gain her voluntary cooperation or deescalate the encounter, nor did he request assistance from either of his partners. Sergeant Zorrilla dragged the female across the floor to eject her from the station merely because she was already on the floor, and he did not indicate that the female had used force against him at any point. Sergeant Zorrilla only said, “Come here,” and he did not tell the female to leave the station before he grabbed her and dragged her on the ground. § 87(2)(g)

While Sergeant Zorrilla was engaged in a physical struggle with the two females to remove them from the station, § 87(2)(b) approached them and said, “I’m gonna hurt you, my dude.” § 87(2)(b) had already demonstrated his hostility toward the officers by disregarding orders to leave



the station and using many profanities and racial slurs toward Sergeant Zorrilla. Given that § 87(2)(b) approached Sergeant Zorrilla while he was engaged in a physical struggle with the two females and explicitly threatened to harm him, § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

**Allegation (I) Force: Sergeant John Zorrilla used physical force against § 87(2)(b)**

**Allegation (J) Force: An officer restricted § 87(2)(b) breathing.**

**Allegation (K) Abuse of Authority: Sergeant John Zorrilla searched § 87(2)(b)**

§ 87(2)(b) stated that after he was pepper sprayed, he took two steps backwards away from the turnstile. An officer who he could not identify due to being blinded by the pepper spray crossed to the unpaid side of the mezzanine and “slammed” him onto the floor by pulling his right arm, and he landed on his left side, causing his head to hit against something. An unknown officer “jumped” on § 87(2)(b) and pulled his legs up while he was on his stomach. An officer then placed a knee on § 87(2)(b) lower back, and the officers held him on the floor. § 87(2)(b) struggled to breathe due to the pepper spray and the officers holding him against the floor. § 87(2)(b) said he could not breathe approximately six to eight times, and the officers did not move. The officers handcuffed § 87(2)(b) and an officer reached into § 87(2)(b) right back pocket and took his wallet. The officer then placed the wallet in § 87(2)(b) front pants pocket.

In Police Officer Reyes’ second BWC recording (Board Review 23), at runtime 04:16, Sergeant Zorrilla runs toward § 87(2)(b) who is climbing the stairs after having been pepper sprayed. Sergeant Zorrilla grabs § 87(2)(b) belt/waistband and pulls him backwards down approximately three or four steps. § 87(2)(b) slowly falls to the ground and lands on his knees. Sergeant Zorrilla lets go of § 87(2)(b) and he falls to the floor onto his left side. § 87(2)(b) does not appear to hit his head against anything. Police Officer Reyes then handcuffs § 87(2)(b). At runtime 05:41, § 87(2)(b) is sitting upright, and he says he has asthma and cannot breathe. No officer kneels on § 87(2)(b) back at any point. At 07:57, Sergeant Zorrilla says, “Where’s your wallet?” and at 08:35, § 87(2)(b) says, “He took my wallet.” At 08:51, Police Officer Reyes is seen holding § 87(2)(b) ID. At 09:18, Sergeant Zorrilla is seen looking through § 87(2)(b) wallet.

Sergeant Zorrilla stated that § 87(2)(b) was unsteady on his feet and tried to climb the stairs to leave the station, and he grabbed § 87(2)(b) by his waist, “gently” brought him back down the stairs, and “escorted” him to the floor. Sergeant Zorrilla explained that this was not a forcible takedown because § 87(2)(b) went down to the floor voluntarily, and he merely “guided” § 87(2)(b) to the ground. No officer placed a knee on § 87(2)(b) back. Sergeant Zorrilla removed § 87(2)(b) wallet from his pocket and removed § 87(2)(b) ID from the wallet. Sergeant Zorrilla stated that he was allowed to find § 87(2)(b) ID because § 87(2)(b) was “an AIDED” at this point in their interaction.

While § 87(2)(b) alleged that Sergeant Zorrilla “slammed” him to the floor by grabbing and pulling his right arm, Police Officer Reyes’ BWC footage shows that Sergeant Zorrilla slowly pulled § 87(2)(b) by his waist from the stairs. § 87(2)(b) landed gently on his knees, and his body fell to the floor only when Sergeant Zorrilla let him go. Additionally, although § 87(2)(b) stated that he could not breathe, no officer is seen on BWC placing a knee on § 87(2)(b) back at any point. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

According to People v. Graham, 211 A.D.2d 55 (1995) (Board Review 25), an officer may search an individual's personal effects if the officer has probable cause that they contain contraband or evidence of a crime. Graham defines probable cause as the body of information available to an officer "which would lead a reasonable person who possesses the same expertise as the officer to conclude, under the circumstances, that a crime is being or was committed."

Patrol Guide Procedure 216-01 (Board Review 26) states that an officer escorting an unidentified individual who is not in police custody to a hospital must witness a search of the individual by hospital authorities, sign a hospital property record as a witness, and examine the property removed to attempt to identify the individual.

Sergeant Zorrilla searched § 87(2)(b) wallet to find his ID, and he did not give any reason for believing § 87(2)(b) was carrying contraband or evidence of a crime. Patrol Guide Procedure 216-01 states that an officer may conduct such a search, but only after the individual has been taken to the hospital and after witnessing a search by hospital authorities and signing a hospital property record. Furthermore, Sergeant Zorrilla is seen on BWC continuing to search § 87(2)(b) wallet even after he removed § 87(2)(b) ID. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

**Allegation (L) Force: Sergeant John Zorrilla used physical force against § 87(2)(b)**

**Allegation (M) Discourtesy: Sergeant John Zorrilla spoke discourteously to § 87(2)(b)**

**Allegation (N) Offensive Language: Sergeant John Zorrilla made remarks to § 87(2)(b) based upon the gender of § 87(2)(b)**

**Allegation (O) Offensive Language: Sergeant John Zorrilla made remarks to § 87(2)(b) based upon the gender of § 87(2)(b) mother.**

**Allegation (Q) Discourtesy: Sergeant John Zorrilla spoke discourteously to an individual.**

In Sergeant's Zorrilla's BWC footage (Board Review 12), at runtime 01:47:10, the EMTs prepare to place § 87(2)(b) on a stretcher, and § 87(2)(b) screams and cries. It is unclear what, if anything, § 87(2)(b) says, but Zorrilla says, "Mind your business." § 87(2)(b) replies, "Suck my dick, how about that?" and continues speaking, but what he says cannot be heard over § 87(2)(b) and the EMTs. Sergeant Zorrilla responds, "Good," several times. At 01:47:40, a male voice says, "What the fuck is wrong with you, stupid?" Sergeant Zorrilla then walks toward the turnstiles, where § 87(2)(b) is standing on the paid side. Sergeant Zorrilla says, "Get out of the train station, right now. Get out." § 87(2)(b) asks why he needs to leave the station, and Sergeant Zorrilla tells him he is "being disorderly." Sergeant Zorrilla then pushes § 87(2)(b) through the turnstile to the unpaid side, and § 87(2)(b) begins repeating, "Don't put your hands on me." (This moment is best captured in the first viral video filmed by the unidentified victim of **Allegation Q** – see Board Review 06).

Once § 87(2)(b) is removed from the station, the verbal dispute between § 87(2)(b) and Sergeant Zorrilla continues on the sidewalk. § 87(2)(b) makes many profane statements in Spanish, including "Son of a bitch," "Suck my balls," "I hope your mother dies," and, "I hope your mother swallows you." At no point is Sergeant Zorrilla heard using any profanities or slurs toward § 87(2)(b). At runtime 01:52:20, Sergeant Zorrilla says, "My man, you know what? Guess what." Sergeant Zorrilla walks approximately one car length toward § 87(2)(b) grabs § 87(2)(b) sweater, and pulls him down to the ground. (This moment is best captured in the second viral video filmed by the unidentified victim of **Allegation Q** – see Board Review 07). Police Officers Rivera and Reyes then handcuff § 87(2)(b). At 01:00:42, the person filming shouts, "You walked up to him and threw him

on the wall... You can't even get a hold of your words because you did some dumb ass shit like that, bro." Sergeant Zorrilla replies, "Because you're talking too much shit."

§ 87(2)(b) stated that while he was handcuffed, he heard § 87(2)(b) speaking Spanish, call Sergeant Zorrilla and his mother a "bitch" and call Sergeant Zorrilla a "dick." Sergeant Zorrilla raised his voice at § 87(2)(b) and said, "My man, my man, you're gonna leave, my man," and also called § 87(2)(b) a "dick" and his mother a "bitch." After being sedated, § 87(2)(b) did not see or hear anything that happened outside the ambulance.

Sergeant Zorrilla stated that § 87(2)(b) made "a noise" and an EMT "jumped" as though she was nervous. Sergeant Zorrilla smiled because he was surprised that the EMT was scared of § 87(2)(b). § 87(2)(b) "yelled and screamed" at Sergeant Zorrilla and asked why Sergeant Zorrilla was laughing at someone in medical distress. Sergeant Zorrilla told § 87(2)(b) to "go about [his] business" and remained focused on § 87(2)(b). § 87(2)(b) continued yelling for approximately one minute while his friend filmed, and then he told Sergeant Zorrilla, "We have your face so we're going to find you and your family and come after you." Sergeant Zorrilla felt that this was a threat, so he approached § 87(2)(b) and told him to leave the station. Sergeant Zorrilla did this because § 87(2)(b) had made a threat and was being loud. § 87(2)(b) ignored Sergeant Zorrilla's multiple commands to leave the station. Sergeant Zorrilla "gave § 87(2)(b) two small pushes" on his side, and § 87(2)(b) crossed over to the unpaid side of the turnstile and continued cursing at Sergeant Zorrilla in Spanish. The dispute continued on the street outside § 87(2)(b) ambulance, where Sergeant Zorrilla told § 87(2)(b) to stay 20 feet away, and § 87(2)(b) refused to comply, paced back and forth, and continued insulting Sergeant Zorrilla and wishing death upon his mother and grandmother. Sergeant Zorrilla decided that "enough was enough" because he had ejected § 87(2)(b) from the subway station and had given § 87(2)(b) "plenty of chances" to leave, and § 87(2)(b) had "committed OGA" by blocking EMS' path out of the subway station. § 87(2)(b) was also interfering with Sergeant Zorrilla's work by distracting him from focusing on § 87(2)(b). Sergeant Zorrilla walked toward § 87(2)(b) grabbed him by his backpack, and pulled him down to the ground so he could be handcuffed. Sergeant Zorrilla did not bring § 87(2)(b) down to the ground for any reason other than to handcuff him. Sergeant Zorrilla denied calling § 87(2)(b) and his mother a "bitch" or a "dick," and he did not believe he told the unidentified individual who was filming that he was "talking too much shit."

A Threat, Resistance, and Injury (TRI) Worksheet prepared for § 87(2)(b) by Sergeant Zorrilla (Board Review 27) states § 87(2)(b) "intentionally put officer safety in danger by causing panic and public alarm in a public place, causing a crowd to gather and surround officers," and that § 87(2)(b) "threatened officer with going to his residence and doing harm to him and his family." The report indicates that Sergeant Zorrilla used a forcible takedown and wrestling/grappling to overcome § 87(2)(b) resistance or aggression.

Title 21, Part 1050.7 of the New York Codes, Rules, and Regulations (Board Review 13) states, "No person on or in any facility or conveyance shall: (i) conduct themselves in any manner which may cause or tend to cause annoyance, alarm or inconvenience to a reasonable person or create a breach of the peace."

§ 87(2)(b) made statements to Sergeant Zorrilla before Sergeant Zorrilla approached him, but what he said cannot be heard in any of the BWC footage. Given that the investigation is unable to determine whether § 87(2)(b) made any threats in these moments, as Sergeant Zorrilla alleged, it remains unclear whether Sergeant Zorrilla was justified in ejecting § 87(2)(b) from the station by pushing him through the turnstile. However, after ascending to the sidewalk, Sergeant Zorrilla took several steps toward § 87(2)(b) grabbed him, and pulled him down to the ground without first giving him any

commands or informing him that he was under arrest. Sergeant Zorrilla's sole reason for bringing § 87(2)(b) to the ground was to place him in handcuffs, but he did not attempt any de-escalation tactics or any less forceful means of arresting § 87(2)(b) before pulling him to the ground. § 87(2)(g)

While officers are generally prohibited from using profanities toward civilians, they may use profanities "in the context of a dynamic situation over which [they are] attempting to gain control," but may not do so when it "[serves] no legitimate purpose but to belittle" a civilian. PD v. Pichardo, DAO DCT Case Number 2015-15012 (Board Review 28).

The NYPD is committed to "treating every citizen with compassion, courtesy, professionalism, and respect." Patrol Guide Procedure 200-02 (Board Review 29).

Sergeant Zorrilla is not heard on any of the BWC footage calling § 87(2)(b) a "dick," or § 87(2)(b) mother a "bitch." § 87(2)(g)

When Sergeant Zorrilla tells § 87(2)(b) friend that he is "talking too much shit," both § 87(2)(b) and § 87(2)(b) have been handcuffed and taken into custody. Although § 87(2)(b) friend shouted loudly about what Sergeant Zorrilla had done to § 87(2)(b) the friend stayed a safe distance from the officers and did not physically interrupt any police duties. Given that the officers had the situation under control, § 87(2)(g)

#### **Allegation (P) Abuse of Authority: Sergeant John Zorrilla forcibly removed § 87(2)(b) to the hospital.**

At runtime 05:59 of Police Officer Reyes' BWC footage (Board Review 23), after § 87(2)(b) was pepper sprayed and handcuffed, § 87(2)(b) is seated upright and says he has asthma and cannot breathe. Police Officer Reyes requests an ambulance for § 87(2)(b) who continues to say he cannot breathe. § 87(2)(b) then shrieks while falling to his side and sitting back up. At 29:10, an EMT flushes § 87(2)(b) eyes. At 37:12, while still in the station with the EMTs, § 87(2)(b) suffers a seizure, and the EMTs administer oxygen. At 42:41, an EMT says, "He's sleepy now." § 87(2)(b) is then removed from the station and placed in an ambulance.

These events captured on BWC are undisputed. It is further undisputed that the EMTs sedated § 87(2)(b) who regained consciousness at § 87(2)(b) with a summons issued by Police Officer Reyes.

Patrol Guide Procedure 221-07 (Board Review 19) states that after an officer pepper sprays an individual, the officer must request the response of EMS and immediately transport the individual to the hospital if he has difficulty breathing or is exhibiting signs of severe distress or hyperventilation.

§ 87(2)(g)

#### **Civilian and Officer CCRB Histories**

- § 87(2)(b) [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- § 87(2)(b) [REDACTED]
- [REDACTED]
- [REDACTED]
- This is the CCRB complaint to which § 87(2)(b) [REDACTED] has been a party (Board Review 39).
- Sergeant John Zorrilla has been a member of service for 19 years and has been a subject in 15 additional CCRB cases and 46 additional allegations, of which six were substantiated in four cases.
  - 201507072 involved a substantiated Interference with Recording allegation. The Board recommended Command Discipline B, but the NYPD declined to prosecute and imposed no penalty.
  - 201509988 involved substantiated Pepper Spray and Retaliatory Arrest allegations. The Board recommended Command Discipline B, which the NYPD imposed.
  - § 87(2)(g) [REDACTED]
  - 202003090 involved a substantiated Threat of Removal to Hospital allegation. The Board recommended Command Discipline B, and the NYPD declined to prosecute and imposed no penalty.
  - Sergeant Zorrilla has had 16 other Physical Force allegations alleged against him in 10 other cases:
    - In 201306582, a Physical Force allegation against Sergeant Zorrilla was closed as complainant unavailable.
    - In 201402854, a Physical Force allegation against him was unsubstantiated. In this case Sergeant Zorrilla allegedly grabbed and squeezed an individual's



- In 202001757, a Physical Force allegation against him was unsubstantiated. In this case an individual attempted to get off the ground, and Sergeant Zorrilla allegedly pushed him back down by placing a knee on his back.
- In 20202014, two Physical Force allegations against him were closed –pending litigation.
- In 202002734, a Physical Force allegation against him was closed as complainant unavailable.
- In 202003090, a Physical Force allegation against him was unsubstantiated. In this case Sergeant Zorrilla allegedly kicked an individual's foot, causing her to fall to the ground.
- In 202104027, a Physical Force allegation against him was closed as alleged victim uncooperative.
- A total of four additional Physical Force allegations have been pleaded against Sergeant Zorrilla in 202203727, 202104505, and 202204460, all of which are currently open.

- This complaint was not suitable for mediation.
- § 87(2)(b) filed a Notice of Claim with the City of New York claiming false arrest, false imprisonment, assault, battery, harassment, menacing, defamation/slander, malicious prosecution, negligent/intentional infliction of emotional distress, negligent hiring/training/supervision, and violations of state and federal civil rights, and seeking \$10 million as redress (Board Review 32).
- § 87(2)(b) filed a Notice of Claim with the City of New York claiming assault, battery, false arrest, false imprisonment, excessive use of force, negligence, illegal search and seizure, failure to intervene, violations of civil and constitutional rights, and malicious prosecution, and seeking \$3 million, plus attorney fees, costs, damages, the removal of Sergeant Zorrilla from the NYPD, and the discipline of Police Officers Rivera and Reyes as redress (Board Review 33).
- A Freedom of Information Law request for any notice of claim filed by § 87(2)(b) was sent to the Office of the New York City Comptroller (Board Review 34). Any responsive notice of claim will be added to the case file upon receipt.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

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Squad: 02

Investigator: JP Lozada Jean-Paul Lozada 11/04/2022  
Signature Print Title & Name Date

Squad Leader: Alexander Opoku-Agyemang IM Opoku-Agyemang 11/4/2022  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date